

ADMINISTRATION TEAM MINUTES

Date: February 7, 2003
Time: 9:00 am
Place: Tacoma AGC Building

<u>Attending:</u>	Cathy Arnold	<u>✓.</u>	Ron Howard	<u>✓.</u>	Mark Scoccolo	<u>✓.</u>
	Dave Banke	<u>✓.</u>	Carl Jonasson	<u>✓.</u>	Bill Senta	<u>✓.</u>
	Jerry Brais	<u>✓.</u>	Tina Nelson	_____	Greg Waugh	_____
	Doug Ficco	_____	Cathy Nicholas	<u>✓.</u>	Tom Zamzow	_____
	Mike Hall	_____	Mark Rohde	_____		
	Bob Hilmes	<u>✓.</u>	Larry Schofield	_____		

Opening: The minutes of the January 10th meeting were approved.

Ron announced that Jeff Carpenter has been recalled to active duty and will be absent from the team for an indeterminate amount of time. Brian Nielsen, a Project Engineer from Seattle, has agreed to a temporary stint on the team during the discussions of progress schedules.

Quality Roundtable

Dave Banke reports that Mowat has been successful on two bids recently. The Lynnwood direct access project for Sound Transit and the new Bridge in Okanogan will both be Mowat contracts. Elsewhere, the company has entered the Alaska market with a low bid on a \$15 Million dollar bridge job on the Copper River. This will be a remote-camp project and there were immediate requests for jobsite tours during salmon season.

Cathy Nicholas described her involvement in two initiatives. She is working to form a joint FHWA/WSDOT team to review the Department's Manufacturer's Certification process. She is also a member of a national task force exploring the recycling of concrete pavement.

Bob Hilmes discussed the new Eastern Region sport of watching the Legislature. Depending on the outcome of the session, the Region may have to close at least one office. Bob's office has two small jobs, a bridge deck overlay and a paver. He is designing a paving job on I-90 near the Idaho border where stud wear is high. The job will include experimental PCC overlays.

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Mark Scoccolo is trying to avoid joining the stampede to unrealistic low bids just to get work. His firm is diverse enough that they should be able to pick up enough work at decent prices to weather the fiscal storm. Mark discussed recent court wins. In an arbitration in Tumwater, the ruling was that the City was responsible for conflicts and damage caused by side sewers. Despite the City's defense that they don't own these facilities, the arbitrator ruled that they have the best information needed to mark them and are responsible to do so. In Renton, a jury verdict ruled that the City was responsible for utility-caused delays to the work.

Bill Senta claims that patience is a virtue. Atkinson doesn't want to make mistakes while trying hard to get scarce work. They are looking to Sound Transit light rail work, perhaps bidding in partnership with their parent, Clark. They're still trying to assemble a team to bid the Hood Canal Bridge.

Carl Jonasson was moaning about being one minute late with the low bid for the Lynnwood job. The other contractors offered to chip in for a wrist watch. Balfour-Beatty will not bid Hood Canal alone, is looking at partnerships.

Cathy Arnold hopes that Northwest Region will advertise the SR 18 job in March. There will be a big Sound Transit project in downtown Bellevue, also this Spring. The Region is looking for help from the Legislature and from the RTID vote this Fall. Failing there, could lose up to 5 offices. No moves are necessary until late this calendar year.

Jerry Brais presented work from King County. High on the list are jobs on Vashon Island (a wall near Tramp Harbor), Sahallee and NE 124th. There are a couple of seismic retrofits and a big job coming at 272nd and the East Valley Freeway.

Ron Howard says that the Construction Office will be in its winter tour around the State the next two weeks. He presented homework concerning deferred payments (see old business), and quoted Doug MacDonald as being optimistic that the Legislature will do something about transportation funding this session.

Old Business—Traffic Control, Section 1-10

The March meeting with the AASHTO subcommittee on Construction was confirmed and discussed. The committee is looking to define guide specs for all aspects of traffic control for the entire nation. Our work in temporary traffic control has been presented to the committee members and the March 6th visit will be an opportunity for us to present our methodology and to answer questions for the committee. The committee is particularly interested in contractor participation.

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Ron reported that the final count for the trial run of the TC specs is sixteen projects, representing all six Regions, a variety of types of jobs and a full range of the spec alternatives. The notices to contractors for these jobs will contain a bidder's alert. The results will be obtained through surveys of all participants (including unsuccessful bidders.) A listing of the 16 jobs is attached.

Follow-up on these trial projects will include a survey of all bidders, midterm project evaluations and end-of-project summaries. The results of these will be brought back to the Team next winter for analysis and final action on the trial specs.

The team discussed and provided comments on the first draft of Construction Manual instructions intended to accompany the new specifications.

- The language concerning cost adjustments for changes in the traffic control plan is confusing. If part of the benefit of the new specs is to provide incentive for contractor innovation to use less traffic control or to do it cheaper, why would we ask for a credit for a reduced effort? The key question seems to boil down to the adequacy of the original plans. If they are deficient, then the cost of additional measures to bring them to sufficiency will be compensable. If we're looking at a reduced cost, or increased cost of contractor preferences where the original plan is adequate, then the cost picture is clouded and no decision has been reached by the Team.
- There is a missing element in the division of TCS/PE responsibilities. This deals with notifying and coordinating adjacent property owners and businesses. This might be in the category of PR.
- There was no consensus about the suggestion to round up to the nearest 15 minutes when measuring flagging and spotting.
- Perhaps there should be a mention of the need for lump sum breakdowns.
- In the discussion of mobile operations, there is no definition of the second piece of equipment that is to be stationed immediately upstream of the workers.

Old Business—Policy and Practice on Deferrals

Ron's suggested Construction Manual revisions were accepted by the Team and will be implemented. This is not enough, in the opinion of the team members, who believe we are not following the Manual now and will probably not follow new language, either. Ron agreed to emphasize the new language and discuss the entire issue with Project Engineers on a 1:1 basis.

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New Business—Bid Item for On-site Overhead

This item was tabled until the next meeting in April, when it is hoped that more members will be present.

New Business—Progress Schedules

The Team agreed to the following approach: First, we will brainstorm all possible issues related to progress schedules and pick those issues we want to address. Second, we will continue brainstorming to identify as many elements of the selected issues as possible. Finally, we will prioritize the element lists and start working on the highest priority.

As a first order, the following interest areas or issues were identified:

- CPM Schedules and submittals
- Schedule Tracking
- Weekly Statements
- Suspensions
- Time Extensions
- Use of Specified Software
- Variable Start Date Jobs (initial 60-day schedule)
- Updates and Revisions to Schedules
- Mini-Schedules, Look-Aheads

New Business—Terrorism Legislation affecting DOT Insurance Requirements?

A question came up during general discussion. The US Congress passed some legislation last year exempting insurance companies from some damage caused by terrorist attacks. Does this have any effect on WSDOT insurance provisions? Ron said he doesn't think so, but really doesn't know. He agreed to investigate and report back.

Future Meetings

March 6th, 2003 @ Westcoast Sea-Tac (8:00 am)—AASHTO Traffic

~~March 14th, 2003 @ Tacoma AGC (9:00 am)~~— **Cancelled**

April 11th, 2003 @ Tacoma AGC (9:00 am)

May 16th, 2003 @ Tacoma AGC (9:00 am)

June 6th, 2003 @ Tacoma AGC (9:00 am)

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Assignment List

<u>Who</u>	<u>What</u>	<u>By When</u>
Ron Howard	Terrorist Legislation vs. WSDOT Insurance Specs	April 11 th

Team's "Round Tuit" List

1. Traffic Control Provisions
2. Policy and Practice on Deferrals
3. Bid Item for On-site Overhead
4. Progress Schedules
5. Disputes Review Boards
6. Section 1-08.8, p5.c—Extensions for Quantity Overruns?
7. Short-term Scheduling
8. Joint Training—Documentation
9. Payroll, Wage Administration procedures
10. Materials on Hand provisions
11. Tort Claims Liability/Accident Reports
12. Web-Based Construction Management
13. Insurance Cost/Reimbursement

Attachment: Proposed Const Manual Language on Deferrals

1-3.1B(9) Withholding of Payments

Withholding payments for work the Contractor has performed and completed in accordance with the contract should not be done casually. There must be clear contract language supporting the action. The authority to withhold progress payments is subdelegated to the Regions. Further delegation to the Project Engineers is at the discretion of each Region.

There are very few occasions when it would be appropriate to withhold the total amount of a payment for completed work. If a minor amount of cleanup remains, if a portion of the associated paperwork has not been submitted, or if minor corrective measures are needed, then the correct action is to pay for the work and defer an amount commensurate with the needed remaining effort.

The concept of “allowing the Contractor to proceed at his own risk” and then withholding payment is not often supported by the contract. There is a contractual obligation to finish the work correctly, there would certainly be a “moral obligation” on the part of the Contractor to live up to the bargain, but there is no contract language that allows such an action. Specific exceptions to this rule are listed below.

Once a decision to withhold any part of the monthly payment has been reached, then it is imperative that the Contractor receive fair notice of this action. The method of this notice can be negotiated with the Contractor and could be a listing at the time of estimate cutoff, a copy of the pre-estimate report or other mechanism. Once notice has been provided, then it is also necessary to allow a reasonable time for corrections to be made.

No Payment for the Work

Standard Specification 1-06.3, “Manufacturer’s Certificate of Compliance” is unique in that this is a situation, specified as part of the contract, where the contractor may request permission to assume the risk for no certificate and end up never being paid for the related work.

Progress Payment Deferral

In the following situations the contract specifies that the contracting agency has the authority to defer the entire progress payment:

- The contracting agency may not make any payments for work performed by a Prime/Subcontractor until the contractor performing the work has submitted a Statement of Intent to Pay Prevailing Wages approved by Labor and Industries (RCW 39.12.040)
- The contractor fails to submit a progress schedule that meets the requirements of the contract (*Standard Specification* 1-08.3)
- Failure to submit the “*required reports*” by their due dates (*Standard Specification* 1-07.11(10)B)

Wage Administration in General

The administration of wages and payment for the work are separate issues. Holding a force account payment for certified payrolls is not appropriate. Withholding

payments on the contract is suggested as a method to achieve compliance under the *Standard Specifications* pertaining to wages (1-07.9(1)). This remedy should not be used without approval of the Headquarters Construction Office. Routine enforcement of wage requirements should be done on their own merits utilizing the sanctions specified as follows:

State Wage Administration

Labor and Industries is the enforcement agency for state prevailing wage administration. The State (WSDOT) is protected under the contract from wage claims by reserving 5 percent of the moneys earned as retained percentage. This 5 percent is made available for unpaid or underpaid wages liens among other claims. Contract payments should not be deferred due to a contractor’s failure to pay the State minimum prevailing wage.

Federal Wage Administration

FHWA 1273 specifies that the State Highway Administration (SHA) is in the enforcement role for federal prevailing wage administration. Under Section IV “*Payment of Predetermined Minimum Wage*” subsection 6., “*Withholding*,” the State Highway Administration (contracting agency) is authorized to withhold an amount deemed necessary to make up any shortfalls in meeting Davis Bacon prevailing wage requirements. It goes on to authorize the deferral of all payments, under certain conditions, until such violations have ceased. This is only for federal wage requirements and the amount “deemed necessary” must be based on the amount of the underpayment.

Application of the Standard Specifications

Under 1-05.1 Authority of the Engineer reads in part as follows: “If the Contractor fails to respond promptly to the requirements of the contract or orders from the Engineer:.... 2. The Contracting Agency will not be obligated to pay the Contractor, and”

Under Section 1-09.9 Payments reads in part as follows: “Failure to perform any of the obligations under the contract by the Contractor may be decreed by the Contracting Agency to be adequate reason for withholding any payments until compliance is achieved”.

Sounds good and we can do so, but withholding of payments owed the contractor must not be done on an arbitrary basis. Other than the previously noted exceptions, money is normally withheld because work/work methods are not in accordance with contract specifications. Also, the amount withheld must have a logical basis. We cannot penalize the contractor by withholding more than the out of compliance work is worth.

Withholding payments should not be used routinely as a tool for forcing compliance on general contract administration requirements. The State is protected against nonperformance by requiring a performance bond. In the event that lack of contract compliance puts the State at substantial risk monetarily or safety wise, it may be appropriate to inform the contractor of the compliance

problem and suspend work under *Standard Specification* 1-05.1 “*Authority of the Engineer*” until corrections are made.

When withholding money, remember that delaying the contractor’s cash flow may damage the contractor’s ability to perform work. Before doing so, the State should be able to demonstrate:

- specifically what was not in accordance with the contract and where the requirement is specified in the documents
- that the amount withheld is commensurate with the amount of the unauthorized, uncompleted or defective work

- that the contractor was notified in a timely manner (within 8 days per prompt pay laws) and given a chance to make corrections
- that the State has worked with the contractor to mitigate corrections to non-specification work in order to minimize the cost

The State is required to pay the contractor in a prompt manner within 10 days of the cutoff for a monthly pay estimate for all work performed in accordance with the contract during that period.

Regions are not authorized to withhold amounts that are greater than the estimated cost of the missing or incorrect portion of the work. Any such excess withholding must be approved by the Headquarters Construction Office.